

REMARKS

A. Allowable Subject Matter

Applicant again wishes to thank the Examiner for indicating that claims 11, 24, 32 and 39 are allowable if rewritten in independent form to include all of the limitations of a base claim and any intervening claims. However, Applicant believes these claims are allowable in their present form for at least the reasons set forth below.

B. Double Patenting

Applicant wishes to thank the Examiner for withdrawing the rejections based on obviousness-type double patenting.

C. The Section 103 Rejections Based On Chang '412 And Chang '757 In Combination With Other References.

The Examiner has rejected a number of claim sets under §103(a) based on the combination of U.S. Patent No. 5,920,412 to Chang ("Chang '412"), U.S. Patent No. 6,657,757 to Chang et al ("Chang '757") and one or more other references as follows: (a) claims 1 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '412 in view of Chang '757; (b) claims 2, 3, 7, 13, 14, 28 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '412 in view of Chang '757, and further in view of U.S. Patent No. 5,570, 355 to Dail ("Dail"); (c) claims 4-6 and 15-17 were rejected as being unpatentable over Chang '412, Chang '757, Dail and U.S. Patent No. 6,574,224 to Brueckheimer ("Brueckheimer"); (d) claims 8, 19, 29

and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '412 in view of Chang '757, Dail and U.S. Patent No. 5,982,771 to Caldara ("Caldara"); (e) claims 9, 20-22, 25-27, 30, 35-37 and 40-42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '412 in view of Chang '757, Dail and U.S. Patent No. 5,832,197 to Houji ("Houji"); and (f) claims 10, 23, 31, and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '412 in view of Chang '757, Dail, Houji and Brueckheimer. Applicant respectfully disagrees and traverses these rejections for at least the following reasons.

Applicant respectfully submits that Chang '412 fails to teach or suggest: (a) the routing of IP traffic to a circuit switch fabric or packet switch fabric; and (b) such routing depending on an ATM service category of the IP traffic, as recited in claim 1 and 12 (as well as claims 28 and 33). Applicant notes that to expedite the examination of the present claims the Applicant has focused his response to these features, it being understood that the Applicant does not acquiesce to the Examiner's other positions.

It is not clear to the Applicant whether the Examiner fully understands his positions. Thus, focusing the present discussion on these two features appears to be the most expeditious course of action.

Initially, the Applicant notes that the fact that the Examiner has rejected the claims based on the combination of a number of references raises the

implication that such rejections are inappropriate based on impermissible hindsight.

Turning now to the two features discussed above, the Examiner has repeatedly acknowledged (as recently as page 3 of the Final Office Action) that Chang '412 is unrelated to IP traffic. Therefore, it follows that Chang '412 does not route IP traffic based on an ATM service category.

To overcome these deficiencies the Examiner appears to rely upon Chang '757. The Examiner states that "Chang '757 teaches routing IP traffic" to a circuit switch system or packet switch system (page 3 of the Final Office Action). However, the Examiner does not address whether Chang '757 accomplishes such routing depending on ATM service categories. It does not. Rather, Chang '757 discloses a "typical IP router" 111 without any other explanation. It is completely silent with respect to the routing of IP traffic using ATM service categories.

Thus, because the combination of Chang '412 and Chang '757 does not disclose or suggest the routing of IP traffic depending on an ATM service category such a combination does not render claims 1 and 12 (as well as 28 and 33).

Perhaps realizing the deficiency in the combination of Chang '412 and Chang '757 the Examiner appears to argue later on in the "Response to Arguments" section of the Final Office Action that Chang '412 does disclose the

routing of traffic based on a service category (not IP traffic though). Applicant disagrees.

In more detail, the Examiner appears to alternatively argue the following rationales: (a) that the phrase “ATM service category” in claims 1, 12, 28 and 33 is not defined; (b) that a “type check 24” in Chang ‘412 is used to route traffic to an STM or ATM switch based on an ATM service category/type; and (c) that the phrases “real time signal” and “non-real time signal” as used in cited, but not applied prior art, establishes that these two phrases are ATM service categories. Applicant respectfully disagrees.

As the Examiner knows well, phrases in a claim must be interpreted in light of the specification. Unquestionably, the specification provides a clear indication of the meaning of the phrase “ATM service category” of IP traffic. For example, the specification provides two examples of such a phrase, namely, real-time (rt), Variable Bit Rate (VBR) IP traffic and Constant Bit Rate (CBR) IP traffic (see specification, page 5 lines 14-25; page 10, lines 5-10; page 11, entire page; and claims 5, 6, 10, 11, 15-17, 23, 31, 32 and 38, where the rt-VBR and CBR designations are two different ATM service categories of IP traffic.

Regarding the type check 24, as the Applicant has explained before, this value determines whether an optical signal is an ATM or STM signal without taking into consideration the ATM *service level* of any traffic type (see Chang

'412, column 12, lines 13-14; 32-33; 53-54; and column 15, lines 25-52) much less IP traffic. In response the Examiner takes the position that the type check 24 categorizes signals as STM or ATM signals based on "the wavelength of the optical carrier associated with the signal". However, optical wavelengths are not ATM service categories. Thus, the Examiner's statements appear to bolster the Applicant's position.

Lastly, the fact that the phrase "real time" is indicative of STM traffic and "non-real time" is indicative of ATM traffic does not imply that these two phrases are ATM service categories. In fact, it seems straightforward to the Applicant that traffic classified as STM traffic is not ATM traffic at all. Thus, it follows that STM traffic cannot be an ATM service category for IP traffic.

The Applicant believes the Examiner may be erroneously equating the phrase "real time" traffic with the phrase "real time-VBR" traffic. In general, the former phrase is typically equated with STM traffic while the latter is an ATM service category. An example may help illustrate the difference between the two phrases. Voice-based traffic is typically considered real time traffic because of the need to transmit such traffic in real time (without delay). Voice based traffic is also considered STM traffic because it is transmitted or switched using STM or "circuit switched" based switches. Non-voice based traffic, such as IP traffic, was originally classified as non-real time traffic because it did not need to be transmitted in real time (i.e., some amount of delay was ok). Such traffic was

not switched through an STM switch. However, generally speaking, as the amount of Internet and email-based IP traffic across existing networks increased (e.g. video and imaging), service providers began to offer services that promised to deliver IP traffic in real time as well. Thus, while IP traffic may be delivered in real time when designated by an ATM service category such as rt-VBR, and then sent to an STM switch, this does not mean that such traffic is STM traffic. Said another way, just because IP traffic designated by the ATM service category rt-VBR is sent to an STM switch does not transform such traffic into STM traffic. One of the advantages of the present invention is that existing STM switches that are normally used to handle traditional voice-based STM traffic can now also be used to handle IP traffic which is given a real-time service category designation.

In sum, it is respectfully submitted that claims 1 and 12 are not rendered obvious by the combination of Chang '412 and Chang '757 because this combination does not disclose or suggest the routing of IP traffic depending on an ATM service category.

Further, because independent claims 28 and 33 and all of the dependent claims have been rejected under 35 U.S.C. 103(a) based on some combination of Chang '412, Chang '757 in addition to one or more additional references (Dail, Caldara, Houji or Brueckheimer) and because these additional references do not overcome the deficiencies of Chang '412 and Chang '757, the Applicant

submits that independent claims 28 and 33 and the dependent claims are also patentable for the reasons set forth above.

D. Entry of Request for Reconsideration

Entry of this Request for Reconsideration ("Request") is solicited because the Request: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issues requiring further search and/or consideration; (c) does not present any additional claims without canceling the corresponding number of finally rejected claims; and (d) places the application in better form for appeal, if an appeal is necessary.

In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 266-3330 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC

By: /John E. Curtin/
John E. Curtin, Reg. No. 37,602
P.O. Box 1995
Vienna, Virginia 22183
(703) 266-3330